

### DECLARATION STATEMENT

I, Kate Ashton am the Grants Administrator for the City of Somerville, Somerville, Massachusetts ("Somerville"). I have occupied the position since September, 2000. My responsibilities with the City of Somerville included participation in the process of preparing, submitting and processing applications for financial support from the Schools and Libraries Support Mechanism ("E-Rate Program") administered by the Universal Service Administrative Company ("USAC"), as well as participation in the selective review process.

2. Consistent with my responsibilities, I participated in Somerville's application process for E-Rate Program support for Funding Years 2005-2006 and 2006-2007 relating to FCC Form 470 Applications filed for certain eligible telecommunications services ("Application"). My role in the 471 submissions to USAC for Long Distance Learning Services to be provided by Achieve subject to E-Rate approval was related to setting up and keeping files of the documents relating to the Achieve 471 submissions and assisting the City's E-Rate Administrative Authority in coordinating the E-Rate process with the E-Rate consultant. As required under E-Rate Program Rules, Somerville timely submitted FCC Form 471 Nos. 2005-2006: 455467; 2006-2007: 516499 to USAC. USAC approved the E-Rate Program support by Funding Commitment Decisions Letters for Funding Requests Nos. 1257549 and 1421087, for 2005-2006 and 2006-2007 respectively (FDLS").

3. I have reviewed both Notification of Commitment Adjustment Letters, dated January 14, 2009, whereby USAC has rescinded and seeks recovery of the support approved or provided pursuant to the FCDL ("Decisions"). In particular, I have reviewed

the Funding Commitment Adjustment Explanations. I am providing this Declaration in connection with the Somerville's appeal of the Decisions.

4. I learned from School Personnel that there was an opportunity for the School District to apply for a grant to cover the District's share of the cost of the services ("Somerville Share") covered by the Applications ("Grant").

5. To the best of my knowledge and belief, Somerville was not aware of the existence of any partnership between Achieve and USDLA and was unaware that Achieve allegedly solicited donations for USDLA.

6. To the best of my knowledge and belief, there was never an offer by Achieve to waive or otherwise not require payment of Somerville School District's share. Nor to the best of my knowledge did Achieve ever offer to rebate the District's share.

7. My responsibilities with the City of Somerville included the oversight of the process of preparing, submitting and processing the Selective Review Process for the Schools and Libraries Division ("E-Rate Program") administered by the Universal Service Administrative Company ("USAC"), by and through Grant Thornton LLP for Funding Year 2006, as it related to the submissions of the billed entity, the Somerville School District.

8. Consistent with my responsibilities, as an administrator supporting the E-Rate Authorized Representative and working with the Authorized Representative, I compiled all necessary review material and provided all necessary documentation on behalf of the Somerville School District, as it related to the selective review process. The District disclosed the grant award from United States Distance Learning Association ("USDLA") in response to Item 10.4 of Attachment B, see Exhibit 1.

9. In its "Report of Independent Certified Public Accountant", dated July 15, Grant Thornton LLP 2008, which conducted the selective review, concluded that the Somerville School District complied with the requirements relative to disbursements of funds and its applications and service provider selections processes, see Exhibit 2.

10. To the best of my knowledge the Somerville did not withhold information as to the application and award of the Grant from USDLA to cover the Somerville School District's share throughout all aspects of the E-Rate application process and selective review process.

I declare under penalty of perjury that the foregoing is true and correct on this 12th day of March, 2009.

Kate Ashton  
Kate Ashton

Middlesex, ss.

On this 12th day of March, 2009, before me, the undersigned notary public, personally appeared Kate Ashton, who is personally known to me to be the person whose name is signed on the preceding document, and who swore or affirmed to me that the contents of the document are truthful and accurate to the best of her knowledge and belief.

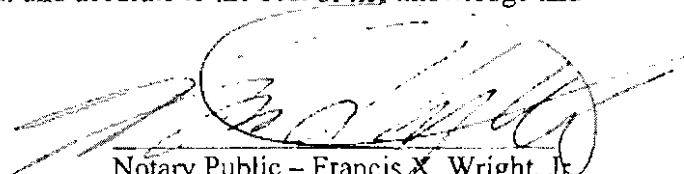
  
Notary Public – Francis X. Wright, Jr.  
My commission expires: June 18, 2018

Exhibit 1

ATTACHMENT B

DOCUMENTS DUE TO GRANT THORNTON UPON ARRIVAL, MAY 19, 2008

Somerville School District  
Karthik Viswanathan  
617-626-6600 Ext. 3260  
kv@somervillema.gov

	Document	Responsible Party	Date Requested	Date of 2nd Request	Date Received
	For each FRN:				
1	FCC Form 470 (Description of Services Requested and Certification Form)		4/28/2008		
2	The FCC Form 471 (Services Ordered and Certification Form)		4/28/2008		
3	FCC Form 486 (Receipt of Service Confirmation Form)		4/28/2008		
4	If used for the selected FRN, Form 472 (Billed Entity Applicant Reimbursement Form, or "BEAR")		4/28/2008		
5	If applicable, BEAR Notification Letter		4/28/2008		
6	If used for the selected FRN, FCC Form 474 (Service Provider Invoice Form)		4/28/2008		
7	Form 500 (Extension of Service Form), if applicable		4/28/2008		
8	All documentation associated with above FCC Form(s) 471 and selected FRN(s) to include, but not all inclusive of, copies of service substitutions approval letters and notification letters to USAC related to equipment transfers.		4/28/2008		
9	If applicable, proof of deposit (BEAR applicants) of USAC reimbursement funds from the Service Provider (deposit slips, bank statements)		4/28/2008		
10	In association with the above FCC Form 471's, copies of:		4/28/2008		
10.1	all RFPs,				
10.2	all bids received (both winning and losing),				
10.3	all documented correspondence (including documentation of informal communications) with potential / selected service providers (i.e. competitive bidding, service issues, etc.),				
10.4	all contracts,				
10.5	documentation verifying the date of receipt of equipment / services,				
10.6	all invoices and supporting documentation for the above FRNs, and				
10.7	copies of cancelled checks (front and back) validating payment to the Service Provider				
10.8	Detailed Enrollment Report that supports the Summary Enrollment Report				
10.9	Detailed NSLP Report that supports the Summary NSLP Report				
11	Policies and meeting notices regarding the application and procurement process.		4/28/2008		
12	Copies of local and state procurement regulations applicable to the Beneficiary (if different from SLD policy) as they relate to contracting for the purchases of internal connections, telephone service and Internet access		4/28/2008		
13	Copy of all Board of Education minutes for the Funding Year(s) under review and six months prior (i.e., to identify discussions of E-Rate related activity) Copy of all Board resolutions for each awarded E-Rate contract		4/28/2008		
14	Copy of relevant meeting minutes where the E-Rate program was an agenda item.		4/28/2008		
15	Copies of technology protection measure (i.e. Internet filter) contracts and invoices for the Funding Year(s) under review, if applicable.		4/28/2008		

Exhibit 2

Report of Independent Certified Public Accountants

**Somerville School District**

SL-2007-069

As of June 30, 2007



## REPORT OF INDEPENDENT CERTIFIED PUBLIC ACCOUNTANTS

Audit • Tax • Advisory

Grant Thornton LLP  
201 S College Street, Suite 2500  
Charlotte, NC 28244-0100

T 704.632.3500  
F 704.334.7701  
[www.GrantThornton.com](http://www.GrantThornton.com)

Somerville School District  
Universal Service Administrative Company  
Federal Communications Commission:

We have examined management's assertions, included in the accompanying Report of Management on Compliance with Applicable Requirements of Title 47 of the Code of Federal Regulations Part 54 of the Federal Communications Commission's Rules and Regulations and Related Orders, that Somerville School District (Beneficiary or Somerville School District) (Beneficiary Number 120536) complied with the Federal Communications Commission's (FCC) Title 47 of the Code of Federal Regulations (C.F.R.) Part 54 Rules and Regulations, as amended, and related FCC Orders identified in the accompanying Attachment I related to disbursements of \$355,379 for telecommunication and Internet access services made from the Universal Service Fund during the fiscal year ended June 30, 2007, and relative to its applications and service provider selection processes for Funding Year 2006. Management is responsible for compliance with those requirements. Our responsibility is to express an opinion on management's assertions about Somerville School District's compliance based on our examination.

Our examination was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants and the standards applicable to attestation engagements contained in *Government Auditing Standards*, issued by the Comptroller General of the United States, and, accordingly, included examining, on a test basis, evidence about Somerville School District's compliance with those requirements and performing such other procedures as we considered necessary in the circumstances. We believe that our examination provides a reasonable basis for our opinion. Our examination does not provide a legal determination on Somerville School District's compliance with specified requirements.

→ In our opinion, management's assertions that Somerville School District complied with the aforementioned requirements relative to disbursements of \$355,379 for telecommunication and Internet access services made from the Universal Service Fund during the fiscal year ended June 30, 2007, and relative to its applications and service provider selection processes for Funding Year 2006 are fairly stated, in all material respects, based on the criteria set forth in Attachment I.



In accordance with *Government Auditing Standards*, we also noted certain immaterial instances of noncompliance or other internal control matters that we have reported to the management of Somerville School District, the Universal Service Administrative Company and the Federal Communications Commission in a separate letter dated July 15, 2008. This communication is intended solely for the information and use of Somerville School District's management, the Universal Service Administrative Company and the Federal Communications Commission and is not intended to be, and should not be, used by anyone other than these specified parties.

*Grant Thornton LLP*

Charlotte, North Carolina  
July 15, 2008

## EXHIBIT C



## DECLARATION STATEMENT

I, Joseph Mastrocola was the Coordinator of Instructional Technology for the City of Somerville School District, Somerville, Massachusetts ("Somerville"). I occupied the position during the time period at issue, until June 2006. My responsibilities with Somerville included assisting with the applications for financial support from the Schools and Libraries Support Mechanism ("E-Rate Program") administered by the Universal Service Administrative Company ("USAC").

2. Consistent with my responsibilities, I participated in Somerville's application process for E-Rate Program support for Funding Years 2005-2006 relating to FCC Form 470 Applications filed for certain eligible telecommunications services ("Application"). I did not take part in the process for 2006-2007 because I had left my position with Somerville in June 2006. Part of my participation included, when necessary, meeting, after the required posting of the Application with USAC, with representatives of Achieve Telecom Network of Massachusetts, LLC ("Achieve") to receive a presentation about Achieve's digital transmission services. I also reviewed of written proposals submitted by Achieve concerning its proposed services in response to the Applications. Pursuant to state and local procurement rules and E-Rate Program Rules, for each of the Funding Years in questions, Somerville chose Achieve to provide the digital transmission services pursuant to the terms of a contract entered into by the City of Somerville and Achieve.. As required under E-Rate Program Rules, Somerville timely submitted FCC Form 471 No. 2005-2006: 455467; to USAC. USAC approved the E-Rate Program support by Funding Commitment Decisions Letter for Funding Requests No. 1257549 for 2005-2006 (FDLS").

3. I have reviewed the Notification of Commitment Adjustment Letters, dated January 14, 2009, whereby USAC has rescinded and seeks recovery of the support approved or provided pursuant to the FCDL ("Decisions"). In particular, I have reviewed the Funding Commitment Adjustment Explanations. I am providing this Declaration in connection with the Somerville's appeal of the Decisions.

4. Achieve's oral and written presentations to Somerville in connection with the Applications did not represent in any way that Achieve was offering a service that would be "no cost" to the Somerville. Achieve did inform Somerville of the opportunity to apply for a grant from the United States Distance Learning Association ("USDLA") to cover Somerville's share of the cost of the services ("Somerville Share") covered by the Applications ("Grant"). Achieve also generally noted that there were other potential sources of such grants. However, Achieve did not represent, either orally or in writing to Somerville that if Somerville selected Achieve as its service provider and applied for such a Grant from USDLA, that approval of the Grant by USDLA was guaranteed. Achieve did not present an automatic Grant from USDLA as part of the Achieve service proposal made to Somerville. Furthermore, USDLA specified that the Grant awards were not contingent upon the selection of Achieve for the provision of services to the Somerville.

5. Somerville obtained, prepared and filed its own applications with USDLA for the Grants. Achieve was not involved in any way in the Grant application process. On behalf of Somerville I dealt directly with USDLA personnel in completing the necessary forms to apply for the Grants.

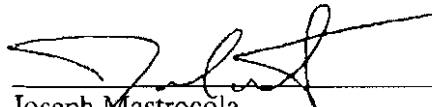
6. To the best of my knowledge and belief, Somerville was not aware of the existence of any partnership between Achieve and USDLA. To the best of my knowledge and belief, Somerville was unaware that Achieve allegedly solicited donations for USDLA.

7. To the best of my knowledge and belief, there was never an offer by Achieve to waive or otherwise not require payment of Somerville's Share. Nor did Achieve ever offer to rebate Somerville's Share.

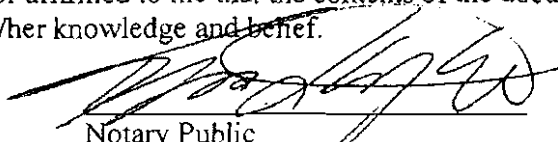
8. Somerville did not withhold information as to the application and award of the Grant from USDLA to cover Somerville's Share throughout all aspects of the E-Rate application process, selective review process, and service invoice processing.

I declare under penalty of perjury that the foregoing is true and correct on this 6th day of March, 2009.

Essex  
Middlesex, ss.

  
Joseph Mastrocola

On this 6th day of March, 2009, before me, the undersigned notary public, personally appeared Joseph Mastrocola, proved to me through satisfactory evidence of identification, which was driver's license, to be the person whose name is signed on the preceding document, and who swore or affirmed to me that the contents of the document are truthful and accurate to the best of his/her knowledge and belief.

  
Notary Public  
My commission expires: June 15, 2015

## EXHIBIT D

**USDLA®**

UNITED STATES DISTANCE LEARNING ASSOCIATION

February 4, 2004

Joseph Mastrocola  
Coordinator Instructional Technology  
Somerville Public Schools  
District Office of Instructional Technology  
5 Cherry Street  
Somerville, MA 02145

Dear Mr. Mastrocola:

The United States Distance Learning Association (USDLA) is pleased to receive and accept your grant application for funding assistance for the Somerville Public Schools / Achieve Xpress Somerville Bridging the Digital Divide Project. We appreciate the opportunity to assist the Somerville Public Schools with this very important and ambitious distance learning project. USDLA is a registered 501 (c) 3, and we provide these grants to support distance learning projects for K-12 school districts.

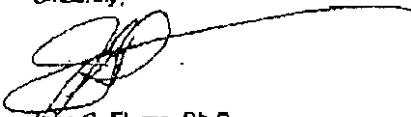
One goal of USDLA focuses on ending the "digital divide" in urban and rural America by supporting the implementation of state-of-the-art technology which encourages and enhances the classroom learning experience with advanced technical resources. Your project represents that specific goal and we welcome the opportunity to build this very important partnership with Somerville Public Schools.

We understand that the project will be funded primarily by E-rate funds from the Schools and Libraries Division (SLD) of the Universal Service Administrative Company and will be dependent upon the approval of the SLD. While you may have been referred to USDLA by a vendor for this project, please understand that our grant is to your school district and is not dependent upon your selection of any specific vendor.

USDLA requires that a final budget be submitted by each school district upon receipt of the Funding Commitment Letter from the SLD. This budget must confirm the E-rate discount percentage and the resultant E-rate cost share for the project. In addition, USDLA expects that a separate line item in the school district budget will be established that is specifically for the receipt of USDLA grant funds for this project. Please communicate the account number and directions for sending the grant money to this account.

We look forward to working with the Somerville Public Schools. Please do not hesitate to contact me directly if you have any questions.

Sincerely,



John G. Flores, Ph.D.  
Executive Director  
[jflores@usdla.org](mailto:jflores@usdla.org)

8 Winter Street, Suite 508 - Boston, MA 02108-4705

Telephone: 800.275.5162 Fax: 617.399.1771

Website: [www.usdla.org](http://www.usdla.org)

## EXHIBIT E



## SOMERVILLE PUBLIC SCHOOLS

181 WASHINGTON STREET • SOMERVILLE, MASSACHUSETTS 02143-3106  
Fax (617) 625 - 0953

Timothy P. Egan  
IS & dB Administrator

(617) 625- 6600 x6025  
tegan@k12.somerville.ma.us

May 11, 2004

Achieve Telecom Network of MA, LLC  
c/o Joy Jackson,  
President  
3 Centennial Drive  
Peabody, MA 01960

RE: - E-rate Year 2004 - Award notification, Somerville Public Schools - Distance Learning Infrastructure  
- Achieve Telecom Network Services Agreement dated January 30, 2004  
- SPS Agreement Reference #Achieve-0401

Dear Ms. Jackson:

Congratulations! This letter serves as written notification that the Somerville Public Schools has accepted Achieve Telecom Network of MA, LLC's proposal for Distance Learning Infrastructure. As you are aware, these services are to be 79% funded through the SLD's E-Rate program, Funding Year 2004, commencing July 1, 2004. The remaining 21% of the contract expense will be paid by the Somerville School District, billed entity #120536, in an amount not to exceed \$108,171.00. Please reference agreement Achieve-0401 for all activities related to the fulfillment of scope of services which has been accepted. As you are aware, our moving forward with this work is subject to our receipt of a Funding Decision Commitment Letter (FCDL) for Form 471# 425096, FRN# 1175002, with annual, pre-discount, eligible, recurring charges equaling \$515,100.00.

Please use the following contact information:

Somerville Public Schools  
Tim Egan c/o E-Rate Contact  
181 Washington Street  
Somerville, MA 02143  
617.625.660 x6025  
Fax: 617.625.0953  
Email: [tegan@k12.somerville.ma.us](mailto:tegan@k12.somerville.ma.us)

The Somerville Public Schools look forward to working with you in the course of this agreement.

Sincerely yours,

Timothy P. Egan  
Information Systems & Database Administrator

/TE

Cc: E-Rate, Funding Year 2004 correspondence file

## EXHIBIT F



## SERVICES CONTRACT

THIS SERVICES AGREEMENT (this "Contract") is entered into and effective this twenty second day of January, 2004 (the "Effective Date"), by and between **Achieve Telecom Network of MA, LLC.**, 3 Centennial Drive, Peabody, MA 01960 ("ATN") and **Somerville Public Schools** 181 Washington Street, Somerville, MA 02143 ("SPS") (individually, a "Party" and collectively, the "Parties")

### **BACKGROUND**

The Schools and Libraries Division (the "SLD") of the Universal Service Administrative Company ("USAC") administers the federal "E-rate" program for telecommunications service, Internet access and internal connections to eligible schools and libraries. SPS is eligible to receive E-rate discounts for these designated services. ATN is a common carriage telecommunications service provider providing tariffed, digital transmission and distance learning circuits (SPIN 143026761). SPS has submitted a request for Digital Transmission Service and Distance Learning Transmission Service ("DLTS") for all of its school sites in its 2004 E-rate 470, Number 369910000481788.

SPS desires for ATN to provide the DLTS (hereinafter defined) described in **Exhibits A and B** attached hereto (the "Service" or "Services"), and ATN desires to provide the Services, all under the terms of this Contract. ATN shall at all times remain approved as a telecommunications service provider offering services eligible for discounts under the E-rate program and shall use its best efforts to obtain and maintain authorization to perform all Services for SPS under this Contract. In consideration of this background, the mutual terms and conditions herein, and further consideration, the sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

#### **Section 1 General**

**1.1 Timeliness.** ATN shall use commercially reasonable efforts to perform the Services in a manner that meets the priorities, timetables, and objectives set forth in this Contract.

**1.2 Project Managers.** All requirements of the Parties under this Contract shall be supervised and coordinated by **Victor E. Gatto** as ATN's project manager, and by **Patrick Nixon** as SPS' project manager, or by such other person or persons as the foregoing representatives may designate from time to time.

#### **Section 2 The Service**

**2.1 The Services.** Subject to the terms and conditions of this Contract, ATN shall provide the following services to SPS:

**2.1.1** DLTS is defined in the attachment to **Exhibit A**, entitled "Scope of Services and E-Rate Compliance" and in the attachment to **Exhibit B** entitled "M.D.T.E. (Massachusetts Department of Telecommunications and Energy) Tariff No. 1 for Intrastate Inter-exchange Access Telecommunications Service" in accordance with the design and functional

specifications for the DLTS (the "Functional Specifications") and the performance criteria for the DLTS (the "Performance Criteria").

**2.2 Exclusivity.** During the term of this Contract, SPS shall not engage any party other than ATN to provide DLTS to their school sites

**2.3 Meetings and Adjustments.** ATN and SPS shall meet at periodic intervals as needed to discuss the Services.

### **Section 3 Performance**

**3.1 Excusable Delays.** Neither Party shall be responsible for delay or failure in performance resulting from causes beyond the reasonable control of such Party, including without limitation, delays caused by the unavailability, or delays in preparation or shipment, of third-party hardware, software or programming services; provided that the Party responsible for the matter causing the delay shall act diligently to remedy the cause of such delay or failure.

### **Section 4 Payment**

**4.1 Prices, Charges and Reimbursable Items.** ATN shall invoice SPS and SLD for its Services, and SPS shall pay ATN in accordance with the provisions set forth in **Exhibit B** attached hereto.

**4.2 Cooperation.** SPS shall receive contemporaneous copies of all invoices submitted by ATN to the SLD. As necessary, SPS shall make all reasonable efforts to assist ATN in collecting monies owed by the SLD, and shall pay ATN invoices from a SPS account for their portion of the service costs as discussed in **Exhibit B**.

**4.3 No Other Payment.** Except as expressly provided in this Contract, ATN and SPS shall each bear all of its own expenses arising from the performance of its obligations under this Contract, including (without limitation) personnel, facilities, utilities, equipment, supplies, clerical, and the like.

### **Section 5 Changes**

**5.1** It is mutually acknowledged that changes in the Services, Functional Specifications, Performance Criteria or pricing and payment structure for all Services may be necessary or desirable, in light of actual experience gained in the course of creation and installation of the Services, or as SPS redefines its needs or due to changes in regulatory or legal requirements. Accordingly, either Party shall be entitled to propose changes to such terms by written notice at any time delivered to the other Party. The Parties agree to consider such proposed changes in good faith, and to make a reasonable effort to accept equitable adjustments where appropriate to accomplish the mutual objectives of the Parties. If a proposed change is accepted, it shall be reduced to a written amendment signed by both Parties.

## Section 6 Obligations of the Parties

**6.1 Cooperation with the Schools.** SPS shall make all reasonable efforts to facilitate and coordinate the cooperation of all school sites that are the subject of this Contract so that the Services may be completed as set forth in this Contract.

**6.2 Further Instruments.** To the extent applicable, SPS shall comply with all third-party licenses or related agreements of any third-party vendors or programmers concerning any components of the Services.

**6.3 Access to SPS Central Facility and schools.** SPS shall give ATN access to such SPS facilities as necessary for ATN to provide the Services under this Contract.

## Section 7 Ownership and Rights

**7.1 Ownership of Equipment.** All equipment procured or obtained by ATN in connection with the provision of the Services shall be the exclusive property of ATN.

**7.2 Indemnity by ATN.** ATN shall defend, indemnify and hold harmless SPS from and against all damages finally awarded as a result of any claim that the Services hereunder infringe the copyright, patent or trademark right of a third party. ATN shall have no liability under this Section 7.2 unless SPS (i) promptly notifies ATN of any actual or threatened infringement claim, (ii) at the reasonable request of ATN, provides ATN with information and assistance to aid in the defense of the claim, and (iii) gives ATN sole control of the defense of the claim. If any Services hereunder, or in ATN's view, is likely to become, the subject of an infringement claim by a third party, ATN shall, at its option, (a) procure for SPS the right to use the Service, or (b) replace or modify the Services to make it non-infringing. SPS shall not enter into any settlement of claims without obtaining ATN's prior written approval, which approval shall not be unreasonably withheld. Moreover, ATN shall have no indemnity obligation for claims of infringement resulting from (a) any combination, operation, or use of any Services or deliverable hereunder with any other components or any other equipment or software, insofar as the Functional Specifications do not directly require such combination, operation, or use; or (b) the preparation, operation, or use of any other components or any other equipment or programming.

**7.3 Project Materials.** The project manager of ATN shall collect and keep the original versions of the Functional Specifications, and the Performance Criteria, as they become available during the course of the creation, installation and implementation of the Services (the "Project Materials"). Except as otherwise provided in this Contract, the Project Materials are and shall be the sole property of ATN; however, SPS may request a copy of the Project Materials for its records.

## Section 8 Freedom of Action; Confidentiality

**8.1 Dealings with Others.** ATN is engaged in the business of providing telecommunications services to a variety of entities, and nothing in this Contract shall prevent or limit ATN from using its and its personnel's general skills in pursuing business of any kind with other customers on any terms, whether or not similar to those provided under this Contract. ATN shall be free to use and disclose in such business pursuits any data-processing or

information-processing techniques, concepts, or ideas used or embodied in the Services or otherwise developed or learned by ATN in the course of rendering the Services

**8.2 Confidentiality.** For purposes of this 8.2, "Owner" means the Party disclosing Proprietary Information, "Recipient" is the Party receiving Proprietary Information, and "Proprietary Information", "Confidential Information", and "Trade Secrets" shall have the respective meanings below.

**8.2.1** SPS and ATN acknowledge and agree that during the term of this Contract each Party will have access to, and disclose to the other, Proprietary Information. Each Party acknowledges that the loss of competitive advantage due to unauthorized disclosure or unauthorized use of Owner's Proprietary Information will cause great injury and harm to the Owner.

**8.2.2** Except as may be otherwise provided for in this Contract, Recipient covenants and agrees that Recipient shall not, without the prior written consent of Owner, or as set forth herein, directly or indirectly:

(i) disclose, divulge, distribute, publish, reproduce, decompile, reverse engineer, transmit, or transfer to others Owner's Proprietary Information, or any portions thereof, by any means or in any form, except (A) to those of Recipient's employees or representatives who require access to Owner's Proprietary Information and have signed an agreement to comply with the use and non-disclosure restrictions stated in this Contract, and (B) pursuant to a subpoena or as required by law, *provided* that prior to any such disclosure, Recipient shall notify Owner in writing of the circumstances requiring such a disclosure and shall cooperate with Owner to obtain a protective order to protect the Proprietary Information, *or*

(ii) make use of the Proprietary Information other than as expressly permitted under this Contract.

**8.2.3** The obligations under this Section 8 shall survive the termination of this Contract, (i) in respect of that portion of Owner's Proprietary Information that consists of Trade Secrets for as long as such Owner's Proprietary Information remains a Trade Secret under District of Columbia law *and* (ii) in respect of that portion of Owner's Proprietary Information that consists of Confidential Information for a period of three (3) years after the effective date of the termination of this Contract.

**8.2.4** For purposes of this Section, the following definitions apply:

(i) "Confidential Information" means information, other than Trade Secrets, that the Owner marks as "Confidential" or which by its nature would reasonably be considered of a confidential nature, including, but not limited to, licensing strategies, advertising campaigns, product ideas, future business plans, information regarding executives and employees, the terms and conditions of this Contract and any data or information defined herein as a Trade Secret, but which is determined by a court of competent jurisdiction not to rise to be a trade secret under applicable law. Confidential Information shall not include information which (a) was in the Recipient's lawful possession prior to the disclosure, (b) is or becomes publicly known through publication or otherwise through no wrongful act of the Recipient, (c) was received from a third party

without similar restriction on disclosure and without breach of this Contract, or (d) is approved for release or use by written authorization of the Recipient.

(ii) **"Proprietary Information"** means collectively, Confidential Information and Trade Secrets.

(iii) **"Trade Secrets"** means information in any form which derives economic value, actual or potential, from not being generally known and not being readily ascertainable by proper means and which is the subject of efforts that are reasonable under the circumstances to maintain its secrecy or confidentiality. Trade Secrets may include: (1) any useful process, machine, chemical formula, composition of matter, or other device which (A) is new or which Recipient has a reasonable basis to believe may be new, (B) is being used or studied by Owner and is not described in a published patent or in any literature already published and distributed externally by the Owner, and (C) is not readily ascertainable from inspection of a product of Owner; (2) any engineering, technical, or product specifications including those of features used in any current product of Owner or to be used, or the use of which is contemplated, in a future product of Owner; (3) any application, operating system, communication system, or other computer software (whether in source or object code) and all flow charts, algorithms, coding sheets, routines, subroutines, applets, libraries, compilers, assemblers, design concepts, test data, documentation, or manuals related thereto, whether or not copyrighted, patented or patentable, related to or used in Owner's business; and (4) information concerning the customers, suppliers, products, pricing strategies of Owner, personnel assignments and policies of Owner, or matters concerning the financial affairs and management of Owner or any parent, subsidiary, or affiliate of Owner.

## Section 9 Limited Warranty and Covenant

**9.1 Services.** ATN warrants that it will render the Services in a professional and workmanlike manner.

**9.2 Ongoing operation.** ATN cannot and does not warrant that the Service will operate uninterrupted or error-free and will use commercially reasonable efforts to cure or correct such failure. The liability of ATN to SPS or any other party for any damage caused by failures, delays, omissions, interruptions in transmission, or for any other damages arising out of the use or provision of the Service shall be limited to an allowance for the time period for which the service was interrupted equal to the pro-rated fee for that time period.

**9.3 Service maintenance.** As described in **Exhibit A**, ATN will maintain all equipment provided by ATN for the term of this Contract, and will replace components, subsystems, and chassis that have failed due to normal wear and tear at no cost to the SPS.

**9.4 Disclaimer.** EXCEPT AS EXPRESSLY PROVIDED HEREIN, ALL SERVICES AND DELIVERABLES PROVIDED UNDER THIS AGREEMENT ARE PROVIDED "AS IS" WITH NO WARRANTIES OF ANY KIND. ATN EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT.

**Section 10**  
**Limitation of Liability**

**10.1 Exclusion of Damages.** Neither Party shall be liable to the other for incidental, punitive, indirect, special or consequential damages for any reason, including, but not limited to loss of business or profits, whether or not foreseeable or based on termination, breach of warranty, contract or negligence.

**10.2 Maximum Liability.** NOTWITHSTANDING ANY PROVISION CONTAINED HEREIN TO THE CONTRARY, IN NO EVENT SHALL ATN'S LIABILITY HEREUNDER, WHETHER IN CONTRACT, TORT, OR OTHERWISE, ARISING OUT OF OR IN CONNECTION WITH THE SERVICES, THE DELIVERABLES HEREUNDER, OR THIS AGREEMENT, EXCEED THE AGGREGATE AMOUNT OF FEES ACTUALLY RECEIVED BY ATN FROM SPS DURING THE 12 MONTH PERIOD IMMEDIATELY PRECEDING THE ACT OR OMISSION THAT GAVE RISE TO THE CLAIM. IN NO EVENT SHALL ANY CAUSE OF ACTION BE BROUGHT BY SPS AFTER ONE (1) YEAR FROM THE DATE SPS KNEW OR SHOULD HAVE KNOWN OF THE CLAIM.

**Section 11**  
**Term and Termination**

**11.1 Term.** The term of this Contract shall commence on the date first written above and shall remain in effect through June 30, 2007. The period for Services shall commence on the later of July 1, 2004 or at such time as SPS receives a Funding Commitment Decision Letter from the SLD and shall end on June 30, 2007. The terms of this contract can be extended for one year until June 30, 2008 upon mutual agreement between SPS and ATN.

**11.2 Termination for Cause.** SPS may terminate this Contract upon thirty (30) days written notice to ATN for any material breach of this Contract, if such material breach remains uncured for a period of one hundred twenty (120) days after receipt of written notice by ATN of such material breach. ATN may terminate this Contract upon thirty (30) days prior written notice. Notwithstanding any provision in this Contract to the contrary, this Contract may be terminated by ATN effective immediately upon delivery to SPS of a written notice of termination if SPS shall breach or fail to perform any of its obligations under the confidentiality provisions of this Contract. No portion of the fees paid to ATN in connection with the performance of the Services shall be returnable or refundable upon termination of this Contract, whether such termination is by SPS or by ATN.

**11.3 Termination for Convenience.** SPS is responsible for properly filing and shall file before the SLD application deadline the Form 471 in each of the years in the term above. If, after properly filing Form 471, the commitment of funds is not approved by the SLD, SPS may terminate this Contract upon thirty (30) days written notice to ATN.

**11.4 Effect of Termination.** Effective upon termination of this Contract, SPS shall (i) immediately cease all use of the Services and Proprietary Information, and (ii) at ATN's election, return all equipment in SPS' possession or control all information and deliverables (including all copies thereof). Effective upon termination of this Contract, SPS hereby releases and discharges ATN of and from any and all obligations or liability whatsoever, whether arising hereunder or from, in connection with, or in any manner connected to, the subject matter of this Contract. The Parties shall cooperate so as to effect an orderly termination of this Contract.

**11.5 Survival.** In the event of termination or expiration of this Contract, Sections 4.1, 7.1, 7.2, 8, 9.2, 9.4, 10, 11.4, 11.5 and 12 shall survive and continue in effect.

## **Section 12 Miscellaneous**

**12.1 No Agency.** ATN, in rendering the Services, is acting solely as independent contractor and neither party is authorized to bind the other in any way. SPS does not undertake by this Contract or otherwise perform any obligation of ATN.

**12.2 Exhibits.** All exhibits attached hereto are incorporated into this Contract and made a part hereof.

**12.3 Severability.** In the event that any term, clause, or provision of this Contract shall be construed to be or adjudged invalid, void, or unenforceable, such term, clause, or provision shall be severed from this Contract, and the remaining terms, clauses, and provisions shall remain in effect.

**12.4 Multiple Counterparts.** This Contract may be executed in several counterparts, all of which taken together shall constitute one single agreement between the Parties.

**12.5 Amendments.** No modification or amendment to this Contract or its exhibits shall be effective unless made in writing and signed by both Parties.

**12.6 Section Headings; Exhibits.** The section and subsection headings used herein are for reference and convenience only and shall in no way modify or restrict any of the terms or provisions hereof. The attachments referred to herein and attached hereto are incorporated herein to the same extent as if set forth in full herein.

**12.7 Required Approvals.** Where agreement, approval, acceptance, or consent by either Party is required by any provision of this Contract, such action shall not be unreasonably delayed or withheld.

**12.8 No Waiver.** No delay or omission by either Party hereto to exercise any right or power occurring upon any noncompliance or default by the other Party with respect to any of the terms of this Contract shall impair any such right or power or be construed to be a waiver thereof. A waiver by either of the Parties hereto of any of the covenants, conditions, or agreements to be performed by the other shall not be construed to be a waiver of any succeeding breach thereof or of any covenant, condition, or agreement herein contained. Unless stated otherwise, all remedies provided for in this Contract shall be cumulative and in addition to and not in lieu of any other remedies available to either Party at law, in equity, or otherwise.

**12.9 Governing Law and Venue.** This Contract shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts without regard to its conflict of laws provisions.

**12.10 Prior Agreements.** This Contract represents the entire agreement of the Parties on the subject hereof and shall supersede all prior representations and agreements whether oral or in writing between the Parties with respect to any of the matters mentioned in this Contract.

12.11 **Notices.** Any notice required or permitted under this Contract shall be in writing and sent by express air courier or by United States mail, registered or certified mail, return receipt requested, to the address first stated above for each Party (or to such other address as may be designated by each Party by written notice) and shall be effective upon receipt.

12.12 **Force Majeure.** Neither Party shall be liable for any delay or failure of performance of this Contract occasioned by any cause beyond the reasonable control of such Party, including, but not limited to governmental action, war, riot or civil commotion, fire, floods, labor disputes, restraints affecting shipping or credit, delay of carriers, and/or inadequate supply of suitable materials.

12.13 **Personnel; Subcontracting.** ATN shall have sole responsibility and authority for the assignment of personnel concerning the services provided under this Contract. ATN shall provide the DLTS and shall engage subcontractors at its sole discretion in rendering the services hereunder.

12.14 **Assignment.** The Parties may not assign or transfer this Contract or any of its rights hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld. In no event shall either party's rights or obligations hereunder be assigned or assignable by operation of law or by any bankruptcy proceedings, and in no event shall this Contract or any rights or privileges hereunder be an asset of the party under any bankruptcy, insolvency or reorganization proceedings. This Contract and the transactions provided for herein shall be binding upon and inure to the benefit of the Parties, their legal representatives, and permitted transferees, successors and assigns.

IN WITNESS WHEREOF, the Parties have caused this Contract to be signed and delivered by their duly authorized officers, all as of the date first hereinabove written.

Achieve Telecom Network of MA, LLC.

By: 

Title: President

Date: Jan 30, 2004

Somerville Public Schools

By: 

Title: Information Systems & Database Administrator

Date: 1/30/04



## **EXHIBIT A**

### **SCOPE OF SERVICES: SERVICE SPECIFICATIONS AND MAINTENANCE SERVICES**

#### **A. Scope of Services and E-Rate Compliance**

See attachment to this EXHIBIT A entitled "Statement of Compliance By Achieve Telecom Network of MA, LLC," showing the Service and Equipment Applicable to Distance Learning Transmission Services," which highlights ATN's compliance with SLD regulations for Priority One Service. This attachment also contains a system-level block diagram for the service and was submitted by SPS as the Service Description in Item 21 of the SLD Form 471.

**Attachment to EXHIBIT A**

**Statement of Compliance by Achieve Telecom Network of MA, LLC**

**Description of Services**

The description of the Distance Learning Transmission Service (DLTS) is taken from the tariff for such service on file with the Commonwealth of Massachusetts:

**I. General Description**

1. The Distance Learning Transmission Service, DLTS, is a telecommunications service that provides the circuits for distance learning application by government departments, corporations, medical facilities, educational institutions, or libraries.
2. DLTS is an intra-state service provided within the Commonwealth of Massachusetts and an inter-state service provided across the United States. Circuit connectivity is provided over the Public Switched Telephone Network (PSTN) and, depending on the bandwidth needed for the transmission of digital signals may be augmented by an overlay network.

**II. Customer responsibilities**

**1. Company Furnished On-premise Equipment (OPE)**

**a. Ownership and Provision of Service from the Company**

Ownership of the equipment remains with the Company and shall not transfer to the Customer in the future, and at no time will the Company provide the equipment for purchase to the Customer.

The Company provides all parts of the DLTS service, including the on-premise equipment.

Please see attached diagram (below) for specifications and locations of the DLTS Wide Area Network (WAN), including the OPE and interconnections with the Customer's Local Area Network (LAN).

**b. Use**

The Customer shall not use the OPE for any purpose beyond supporting this telecommunications service.

The Company further reserves the right to make the on-premise equipment installed by the Company in support of this service available on a shared basis to other customers.

**c. Storage requirements**

The Customer shall be responsible for providing adequate storage space for the OPE.

**d. Environmental requirements**

The Customer shall provide an operational environment that is in compliance with the environmental specifications of the installed equipment.

**e. Access security**

The Customer must provide a reasonable level of access security to the OPE. This is expected to be in keeping with other installed communication equipment.

**f. Access requirements**

The Customer shall provide the Company with reasonable access to the Company's equipment for the purposes of maintenance and service changes.

The Customer shall designate a point of contact with which the Company shall arrange such access.

**g. CFE Equipment relocation**

The Customer may not relocate OPE equipment to a facility other than the one in which it has been installed by the Company. Service must be discontinued at the Site and re-initiated at the new Site.

**h. Responsibility for CFE Damage or Loss**

The Company is responsible for all maintenance of the OPE. The Company will maintain and service the equipment for the duration of the service agreement, replacing components, subsystems, or chassis that have failed due to normal wear and tear at no cost to the Customer.

The Customer shall be responsible for the placing the OPE in a secure and safe environment. The Customer shall be responsible for equipment loss, as well as damage due to vandalism, fire, storms, inappropriate storage conditions, or other causes.

The Customer shall be liable for damage caused to the equipment by unauthorized personnel attempting to repair or modify the equipment. Only Company personnel or their designees may service the equipment.

The Customer's liability for the OPE shall be equal to the replacement cost plus service labor required to restore the OPE to its initial condition.